

UNIFORM RULES OF COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

Chapter III. Civil Rules and Civil Case Management

It is the policy of the Superior Court of California, County of Kern, to manage all civil cases from the date of filing through final disposition. All parties are subject to this policy and are expected to proceed diligently and expeditiously in preparing civil cases for trial. (Effective 7/1/03)

"Civil cases" as used in these Rules shall not include domestic relations/family law matters, juvenile court matters, probate matters, special petitions, actions brought for equitable relief only entitled to preferential setting for trial without the use of juries, asset forfeiture cases (Health and Safety Code Sections 11470 et seq.), and criminal matters. All other cases will be included and classified at filing as general civil. (Effective 7/1/03)

Nothing in these rules shall prevent a court, in an individual case, from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed by these rules. (Effective 7/1/03)

In civil matters filed in the Regional Courts, the court shall determine the appropriate location for the trial at the case management conference. The judge, using information concerning the parties' residences, the attorneys' residences, the likely witness' locations, estimated trial days, and other relevant factors, will determine the need to retain the case at the Regional Division for trial or to transfer the matter to the Metropolitan Court Civil Division. (Effective 7/1/03)

If the matter is to be tried at the Metropolitan Division, the judicial officer shall set a trial setting conference no later than three (3) weeks following the case management conference. The Metropolitan Court Civil Division shall subsequently assign a judge for all purposes upon receipt of the filing, and notify all parties of the time and Department for the Trial Setting Conference. (Effective 7/1/03)

A transfer to the Metropolitan Court Civil Division under this policy shall not affect the time standards for disposition of civil cases in this county. (Effective 7/1/03)

Rule 3.1 Application of Rules - Case Types (Effective 7/1/03)

These rules apply to limited and unlimited jurisdiction general civil cases filed in the Kern County Superior Court. (Effective 7/1/03)

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Rule 3.2 Facsimile Filing of Civil Actions (Effective 7/1/03; rev. 1/1/06)

The Superior Court of California, County of Kern, have elected to allow the filing of civil documents by facsimile transmission through Official Payments Corporation. California Rules of Court 2001 through 2009 apply to facsimile filing of civil documents by attorneys or parties without attorney. (Effective 7/1/03)

- (a) To fax directly to any court's 800 Audiotex fax number, filing attorneys and parties should call Official Payments Corporation at (800) 322-4945 to register their fax number, credit card number and expiration date. (Effective 7/1/03; rev. 7/1/04; rev. 1/1/06)
- (b) The court's facsimile machine shall be available 24 hours a day, although filings received after 5:00 p.m. or on Court Holidays shall be deemed filed on the next court day. (Effective 7/1/03)
- (c) If any of the Rules are not followed, including those provisions of the applicable rules not printed here, the court will not accept the filing of the document. The proper transmission of a document by a facsimile machine is the responsibility of the filing attorney or party, not the court. The filing agency must pay all applicable fees at the time of filing. (Effective 7/1/03)
- (d) Confirmation of the filing of the document shall be given by the standard confirmation of facsimile machines. The court will not fax a copy of the cover sheet back to the filing attorney or party. (Effective 7/1/03)

Rule 3.3 Telephonic Court Appearances (Effective 7/1/03; rev. 1/1/06)

Within the Superior Court of California, County of Kern, the Superior Court Division and Departments within said Division listed in Addendum 2 allow telephonic court appearances through CourtCall. The telephonic court appearances are permitted only for non-testimonial Law and Motion, Case Management Conference proceedings including conferences that include trial setting and probate proceedings. CourtCall may be arranged by contacting CourtCall, LLC at 6383 Arizona Circle, Los Angeles, California 90045, toll free telephone number (888) 88-COURT or (310) 342-0888, fax number (310) 743-1850 or (888) 88FAXIN. Contact must be made at least five (5) court days in advance of the appearance or with leave of Court on Ex Parte application and payment of a motion filing fee. Counsel should refer to California Rules of Court Rule 298, as amended 1/1/01. (Effective 7/1/03; rev. 1/1/06)

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Rule 3.4 Pretrial Hearings and Other Motions - Civil (Effective 7/1/03)

All Law and Motion matters will be heard pursuant to the courtroom schedule (Addendum 1A through 1K). Hearing dates for Law and Motion matters in Metro Division are not required to be pre-cleared. However, hearing dates for ex parte matters must be pre-cleared with the Fast Track clerks. In the Regional Divisions, a Civil Law and Motion date can be obtained at the court Civil Division office/counter or by calling the Civil Division as follows: (Effective 7/1/03)

Superior Court - East Division (Ridgecrest)	(760) 384-5900
Superior Court - East Division (Mojave)	(661) 824-7100
Superior Court - East Division (Kern River)	(760) 549-2000
Superior Court - North Division (Delano)	(661) 720-5800
Superior Court - North Division (Shafter)	(661) 746-7500
Superior Court - South Division (Lamont)	(661) 868-5800
Superior Court - South Division (Taft)	(661) 763-8531

Rule 3.4.1 Motions for New Trial or Motions to Set Aside and Vacate (Effective 7/1/03)

Motions for a new trial or motions to set aside and vacate a judgment shall be heard by the trial judge. When the trial judge is unavailable, the motion shall be noticed in a Department and before a judge designated by the Presiding Judge pursuant to Code of Civil Procedure Section 663. A motion for a new trial shall be noticed by the Clerk of the Court in accordance with Code of Civil Procedure Section 661. (Effective 7/1/03)

Rule 3.5 Ex Parte Applications and Orders (Effective 7/1/03)

All ex parte applications which require notice will be noticed in the Civil Division or Direct Calendar Court for a ruling. All ex parte matters must be precleared. Copies of all papers to be presented at the hearing shall be filed with the court no later than 12:00 noon the day before the scheduled hearing time. These documents may be "faxed." (Effective 7/1/03)

- (a) The Presiding or Direct Calendar Judge shall be available for the signing of ex parte orders or shall designate a judge or judges who will be available for such signing. (Effective 7/1/03)
- (b) Attorneys shall not seek to have ex parte orders signed by judges other than those assigned by the Presiding Judge. (Effective 7/1/03)

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- (c) Requests for ex parte orders shall be based solely on the moving papers without oral argument or comment by counsel, but the judge may, in his or her own discretion, exempt matters from this provision. (Effective 7/1/03)
- (d) Notice shall be in accordance with California Rule of Court 379(b), and all paperwork shall be submitted no later than 12:00 noon the day before the scheduled hearing. (Effective 7/1/03)

Rule 3.6 Juror Fees and Expenses (Effective 7/1/03)

Jury fees and mileage shall be governed by the Code of Civil Procedure, Section 631, et seq. Unless otherwise ordered by the Presiding Judge, the Clerk's Office will not accept client's personal checks for daily jury fees. These fees should be paid by the attorney's firm's check. (Effective 7/1/03)

Rule 3.7 Actions on Promissory Notes and Contracts Providing for the Payment of Attorney's Fees (Effective 7/1/03)

- (a) The following attorney's fees shall be awarded under normal conditions in actions on promissory notes and contracts providing for the payment of attorney's fees and foreclosures: (Effective 7/1/03)

Default action on note or contract, exclusive of costs: (Effective 7/1/03)

20% of the first \$5,000 with minimum fee of \$150.00;
15% of the next \$10,000;
10% of the next \$35,000;
5% of the amount over \$50,000. (Effective 7/1/03)

In an action upon contract providing for an attorney's fee, the clerk shall include in the judgment an attorney's fee in accordance with this schedule (not to exceed the amount prayed for). (Effective 7/1/03)

- (b) Additional Fees (Effective 7/1/03)

A petition for compensation for additional services rendered under Subsection (a) of this rule, or in a probate or other proceeding, shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally required. In determining such fees, the court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount involved and the results achieved. (Effective 7/1/03)

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Rule 3.8 Selection of Monitoring Judge and Setting of Case Management Conference
(Effective 7/1/03)

- (a) At the time the complaint is filed, the clerk will select a monitoring judge at random by drawing from the pool of judges assigned and shall set a case management conference for the case on said judge's calendar not more than 180 days thereafter, and issue notice thereof, which notice will be served on all defendants by plaintiff and on all cross-defendants not already parties to the action by cross-complainants. The term "monitoring judge" as used in these Rules shall include direct calendaring judges as well as judges who are assigned cases for "all purposes" by the Presiding Department. (Effective 7/1/03)
- (b) The monitoring judge to whom the case is assigned shall be responsible to move the case along to an orderly disposition under these Rules. All motions provided for under these Rules shall be made to the monitoring judge. If the assigned judge is operating a direct calendar court, the assignment shall be deemed for "all purposes." (Effective 7/1/03)

Rule 3.9 Discovery (Effective 7/1/03)

During the period prior to the case management conference, the parties are, at a minimum, to engage in the basic discovery necessary to determine the presence or absence of all necessary parties in the action, to determine the issues which are in actual controversy and those without substantial controversy, and to properly evaluate the case for meaningful settlement negotiations. (Effective 7/1/03)

Rule 3.10 Final Case Management Conference (Effective 7/1/03; rev. 1/1/06)

- (f) At least five (5) days prior to the final case management conference, or at least fifteen (15) days prior to the date the matter is set for trial in the absence of a final case management conference, each party shall serve on every other party and submit to the court the following: (Effective 7/1/03)
 - (1) Said party's proposed jury instructions. All parties are invited to use the Instruction Request form for the standard CACI instructions. If any standard instructions are not on the request form, or if any special instructions are going to be requested, they must be served with the request form. (Effective 7/1/03; rev. 1/1/06)

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- (2) All motions in limine in written form, together with any points and authorities in support thereof. (Effective 7/1/03)
 - (3) A list of all witnesses that said party intends to call in his or her case in chief. (Effective 7/1/03)
 - (4) A proposed generic statement of the case to be read to the jury at the beginning of the case. (Effective 7/1/03)
 - (5) A list of all photographs, documents, physical objects or other tangible things that said party intends to have marked as an exhibit and introduced in evidence at the time of trial. (In matters where a final case management conference has been set, said items will actually be brought to the final case management conference for examination). (Effective 7/1/03)
- (b) Prior to the final case management conference, or prior to the trial if no final case management conference is set, counsel will confer in an effort to resolve the jury instructions, issues raised in the motions in limine, the generic statement of the case, and the admissibility of the various photographs, documents, physical objects and other tangible things included in each party's exhibit list. In addition, counsel shall review the witness lists and make their best estimate of the time anticipated for the direct and cross-examination of each of the witnesses. Counsel will also attempt to work out stipulations concerning issues which are not contested. At the time of the final case management conference or at the time of trial, if no final case management conference is set, efforts will be made to resolve the remaining issues and, to the extent that they are unresolved by agreement, will be ruled upon by the court. Final Case Management orders shall be generated settling the jury instructions (subject to augmentation after the evidence is received), providing rulings on the motions in limine, providing for the admission of certain photographs, documents, physical objects or other tangible things, and settling the generic statement of the case. A master list of witnesses and the anticipated time involved for each witness will also be generated for use of court and counsel. Such other orders will be made as may be appropriate for the management of the anticipated trial. (Effective 7/1/03)
- (c) All final case management documents shall be filed (pursuant to California Rules of Court 311) under a cover sheet which lists the documents submitted. (Effective 7/1/03)

Rule 3.11 Stayed Cases (Effective 7/1/03)

When an action subject to these rules is stayed for one or more of the reasons set

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forth in subparagraph (d) of Rule 225 of the California Rules of Court, the responsible party, in addition to filing the notice of stay and notice that the stay is vacated or no longer in effect, shall file with the court on a periodic basis no less frequently than every ninety (90) days, a status report advising the court, to the extent applicable, of the following: (Effective 7/1/03)

- (a) Efforts being made to obtain relief from the stay so that the action in this court can proceed. (Effective 7/1/03)
- (b) The progress being made in the federal or higher state court action in which the stay was issued to resolve the issues which would otherwise require litigation in this court. (Effective 7/1/03)
- (c) The propriety of severing parties, causes of action and/or cross-actions which would be subject to the stay and proceeding with the balance of the litigation. (Effective 7/1/03)

Rule 3.12 Disallowance of Interruptions (Effective 7/1/03)

Once the case has been assigned to a trial court by the Presiding Department or called to trial by a Direct Calendar Department, it shall proceed without interruption to conclusion. No adjournment will be allowed to explore settlement, conduct discovery, marshal evidence or prepare for the presentation of any subsequent portion of the trial, except in unusual circumstances without fault of the moving party where good cause is shown in the sound discretion of the trial judge. It is also anticipated that each party will have his or her witnesses available to present his or her case without interruption or delay. An unexcused inability of a party to proceed because of a failure to schedule adequate witnesses, or otherwise, may result in sanctions being imposed, including a determination by the trial judge that said party has rested. (Effective 7/1/03)

Rule 3.13 Differential Case Management (Effective 7/1/03)

Pursuant to California Rule of Court 209.1(c), all general civil cases are presumed to be Plan One (1) cases subject to disposition within twelve (12) months from date of filing of complaint. (Effective 7/1/03)

Rule 3.14 Collection Cases (Effective 7/1/03)

In the event that during the pendency of the action, whether the defendants have

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appeared or not, the parties agree to resolve that matter with a program of periodic payments, all monitoring and time requirements can be terminated, including the filing of responsive pleadings by the defendants (Rule 316), and requesting entry of default (Rule 318), provided that the conditions in (a) through (d) below are met. If the periodic payment agreement satisfies these conditions, the case will be deemed "disposed of" and will no longer be monitored. (Effective 7/1/03)

- (a) The parties file with the court a written stipulation and agreement setting forth in detail the terms of the periodic payments which, if made, will fully satisfy the obligations which generated the litigation. (Effective 7/1/03)
- (b) That the stipulation and agreement further provide that on full performance of the agreement by the defendants, plaintiff will request a dismissal of the entire action with prejudice; and in the absence of such a request, the court may dismiss the action on its own motion, without notice to the parties, after forty-five (45) days has expired from the due date of the last payment unless plaintiff, within that time, requests entry of judgment as provided in Subparagraph (c). (Effective 7/1/03)
- (c) That the stipulation and agreement further provide that in the event defendant fails to make any of the payments required, plaintiff may, by written declaration, notify the court of defendant's default and the amount then due under the agreement and request that the court enter judgment accordingly, together with costs of suit. (Effective 7/1/03)
- (d) That the stipulation and agreement be unconditional so that a judicial determination will not be required and the court's only remaining function in the case would be to enter a dismissal as provided in Subparagraph (b) or a judgment as provided in Subparagraph (c). (Effective 7/1/03)
- (e) That the parties shall file with the court a request for dismissal without prejudice reserving to the court jurisdiction to set aside such dismissal to enter judgment as provided in (c) hereof. (Effective 7/1/03)

Rule 3.15 Uninsured Motorist Cases (Effective 7/1/03)

- (a) At the time of filing a complaint for personal injury or wrongful death or at any time thereafter, plaintiff may file a declaration with the court establishing the items set forth in (1) through (4) below. On receipt of such a declaration, the court may classify the case as "uninsured motorist". (Effective 7/1/03)

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- (1) All the named defendants are believed to be uninsured and the action is filed to protect the running of the statute of limitations in the event that insurance is later discovered or plaintiff, after filing the action, has learned that all the defendants are uninsured. (Effective 7/1/03)
 - (2) Plaintiff is proceeding to arbitration with his or her insurer under the uninsured motorist provision of his or her insurance policy, and does not intend to proceed in the action against the uninsured defendants. (Effective 7/1/03)
 - (3) In resolving the case with the defendants, it has been determined that defendants were underinsured within the meaning of plaintiff's policy which provides underinsured motorist's coverage. (Effective 7/1/03)
 - (4) Plaintiff's counsel has sought from plaintiff's insurer a concession of uninsured status of defendant to avoid the filing of the action or to dismiss it and plaintiff's insurer has refused. (Effective 7/1/03)
- (b) Cases classified as uninsured motorist will be placed on a review calendar and plaintiff will file a certificate of progress every 90 days advising the court of the status of his claim against his insurer and the progress of the arbitration proceeding, if any. (Effective 7/1/03)
- (c) In the event that plaintiff's claim against his insurer is not resolved within 180 days after being designated uninsured motorist, the court may require plaintiff's counsel to appear for a hearing to determine when the matter will be resolved and the action dismissed or reclassified as general civil litigation. (Effective 7/1/03)
- (d) When plaintiff's claim is resolved against his insurer, plaintiff's counsel shall give notice to the insurer that the action is pending in this court and shall seek consent from the insurer to dismiss the action. The notice shall contain the complete title of the cause, case number and a statement to the effect that the case is governed by these Rules and that, effective as of that date of the notice, the case is reclassified as general civil litigation and a proof of service or certificate of progress is due sixty (60) days therefrom under California Rule of Court 201.7. In filing the original of such notice with the court with appropriate proof of service, plaintiff's attorney shall provide the court with the name, address and phone number of the appropriate representative of plaintiff's insurer. The filing of such a notice with the court does not preclude the need to file a formal

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substitution of attorneys unless plaintiff's attorney intends to remain of record. (Effective 7/1/03)

Rule 3.16 Alternative Dispute Resolution (Effective 7/1/03)

Rule 3.16.1 Alternative Dispute Resolution Policy (Effective 7/1/03)

It is the policy of the Superior Court that the parties in every general civil case participate in voluntary mediation, arbitration, neutral evaluation, an early settlement conference or some other appropriate alternative dispute resolution process prior to trial. (Effective 7/1/03)

Rule 3.16.2 Mandatory Arbitration (Effective 7/1/03)

It is the policy of the Superior Court that Plan One (1), Two (2) and Three (3) at-issue long cause civil actions except those excluded by statute, pending on or filed after the operative date of these rules be submitted to arbitration. (Effective 7/1/03)

Rule 3.16.3 Order to Show Cause (OSC) Procedure (Effective 7/1/03)

Upon appointment of the arbitrator, the court will set the case for an OSC as to why the matter has not been arbitrated within the ninety (90) day arbitration period. Upon timely completion of arbitration, the OSC will be removed from the calendar. (Effective 7/1/03)

Rule 3.16.4 Voluntary Civil Mediation (Effective 7/1/03)

Rule

3.16.4.1 Purpose of Program (Effective 7/1/03)

- (a) The purpose of the civil mediation program is to promote and facilitate the voluntary mediation of civil disputes. (Effective 7/1/03)
- (b) This program is not established pursuant to the Civil Mediation Act, Code of Civil Procedure section 1775, et seq.. (Effective 7/1/03)

Rule

3.16.4.2 Eligible Cases (Effective 7/1/03)

The mediation program provided for in these rules is available to all general civil cases, regardless of the type of action or relief sought. (Effective 7/1/03)

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Rule

3.16.4.3 Election to Mediate (Effective 7/1/03)

Parties to the action may opt for mediation only upon the voluntary agreement of all parties to the case. (Effective 7/1/03)

Rule

3.16.4.4 Mediation in Lieu of Judicial Arbitration (Effective 7/1/03)

- (a) Parties to any civil action assigned to judicial arbitration may elect voluntary mediation. Parties who seek to mediate a case in lieu of judicial arbitration must file a stipulation to mediate with the Court no later than the initial case management conference. (Effective 7/1/03)
- (b) The Court must exempt a case from judicial arbitration under California Rule of Court 1600.5(f) or (g) upon filing a stipulation to mediate. (Effective 7/1/03)
- (c) Upon conclusion of the mediation, parties must file a Statement Regarding Mediation which states that mediation has been completed and that the parties to the action or the authorized representatives of the insured's insurance company participated in the mediation. (Effective 7/1/03)

Rule

3.16.4.5 No Tolling of Time Limits (Effective 7/1/03)

- (a) The election to mediate in lieu of judicial arbitration will not suspend any time periods specified by statute, the California Rules of Court or these local rules. (Effective 7/1/03)
- (b) Absent an order providing for additional time, actions in which mediation has not taken place within the period specified herein, will be subject to an order to show cause why the action should not be dismissed, the answer stricken, or other appropriate sanctions imposed. (Effective 7/1/03)

Rule

3.16.4.6 Selection of Mediation Provider (Effective 7/1/03)

The parties must select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The mediation provider need not be an

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attorney. The parties are not required to select a mediation provider from the Court's list. (Effective 7/1/03)

Rule

3.16.4.7 Payment of Mediation Provider (Effective 7/1/03)

The cost of mediation must be borne by the parties equally unless the parties agree otherwise. (Effective 7/1/03)

Rule 3.16.5 Settlement Conference (Effective 7/1/03)

On a date not less than twenty (20) days nor more than forty (40) days from the trial date, a settlement conference will be held pursuant to California Rule of Court 222. The Court shall designate the date, time and place of such settlement conference. (Effective 7/1/03)